January 8, 2003

Executive Compensation

The story in the January 6 Wall Street Journal, "Delaware Justice Warns Boards of Liability for Executive Pay" has generated a number of inquires. Chief Justice Norman Veasey of the Delaware Supreme Court participated in a roundtable discussion of executive compensation that was reported in the January issue of the Harvard Business Review and from which the Wall Street Journal story was drawn. Chief Justice Veasey did not say that the Delaware courts would start to regulate executive compensation. He said just the opposite; the courts do not have regulatory power and are not seeking it.

What Justice Veasey did say was that boards must act in good faith. This has always been the rule. Essentially Justice Veasey endorsed sound corporate governance practices of the type long advocated. He said:

> [I]f directors claim to be independent by saying, for example, that they base decisions on some performance measure and don't do so, or if they are disingenuous or dishonest about it, it seems to me that the courts in some circumstances could treat their behavior as a breach of the fiduciary duty of good faith. I would urge boards of directors to demonstrate their independence, hold executive sessions, and follow governance procedures sincerely and effectively, not only as a guard against the intrusion of the federal government but as a guard against anything that might happen to them in court from a properly presented complaint. Compensation committees should have their own advisers and lawyers. Directors who are supposed to be independent should have the guts to be a pain the in the neck and act independently.

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